

TO: EQB Board Members

DATE: June 9, 2005

FROM: John Wachtler
EQB Staff (Tel: 651-296-2096)

SUBJECT: **Decision on the scope of the environmental impact statement (EIS) for a proposed independent spent-fuel storage installation (ISFSI) at the Monticello Nuclear Generating Plant.**

Action Requested:

The Board is asked to approve the scoping decision for an environmental impact statement (EIS) for a proposed independent spent-fuel storage installation (ISFSI) at the Monticello Nuclear Generating Plant.

Background:

Since the early 1970's, the State of Minnesota has periodically been on the forefront of state nuclear-energy policy issues, including the complex interface between federal and state regulatory authority over nuclear reactor radiation health and safety. See, e.g., *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd mem.*, 405 U.S. 1035 (1972) (federal government has exclusive authority to regulate radioactive discharges from nuclear reactors); and *State of Minnesota, by the Minnesota Pollution Control Agency v. United States Nuclear Regulatory Commission*, 602 F.2d 412, (D.C. Cir. 1979) (Regarding whether the NRC must use a formal hearing to assess the environmental impacts of long-term storage at reactor sites before allowing spent fuel re-racking in pool, leading to subsequent NRC "Waste Confidence Rule.") In 1992, the legislative approval of an ISFSI at Xcel Energy's Prairie Island Nuclear Generating Plant, of course, led to not only the EQB's temporary search for a spent nuclear-fuel storage site in Goodhue County, but also to a number of far reaching state energy policies.

The current issue facing the Board is due to the fact that Xcel Energy's Monticello Generating Plant will run out of storage capacity for spent nuclear fuel by 2010. On January 18, 2005, Xcel Energy submitted its Certificate of Need Application ("CON Application") for the Monticello ISFSI to the Minnesota Public Utilities Commission (PUC). In addition, the Monticello Generating Plant's United States Nuclear Regulatory Commission (NRC) operating license expires in September, 2010. On March 16, 2005, Xcel Energy applied to the NRC for a twenty-year license renewal for the generating plant. Xcel Energy has asked the PUC for enough additional spent fuel storage capacity to allow the plant to operate for the entire twenty year license renewal period, until 2030.

EQB Role

Before the PUC can make its certificate of need decision for the ISFSI, the EQB must prepare an EIS. Minn. Stat. §116C.83, subd. 6(b). (This responsibility shifts to the Department of

Commerce on July 1, 2005.) The Minnesota Power Plant Siting Act, Minnesota Statutes §§ 116C.51 to 116C.69, does not apply to this proceeding. Instead, the EIS for the proposed ISFSI falls under the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, and the Minnesota Environmental Review Rules, Minn. Rules chapter 4410. Pursuant to Minn. Rule chapter 4410.2100 the draft scoping decision document and the scoping environmental assessment worksheet was mailed to the project contact list, e-mailed and posted on the EQB web site.

Comments on Draft Scope Decision

Comments on the draft scope were submitted by the following individuals or organizations:

1. Xcel Energy (James Alders);
2. Minnesota Department of Commerce (Steve Rakow);
3. Andy Edgar;
4. Mary Curtis;
5. Lee Dilley;
6. Dawn Froelich;
7. Sara Johnson;
8. Lucille M. Hick;
9. Carol Overland, Esquire;
10. North American Water Office (George Crocker);
11. Minnesotans for an Energy Efficient Economy (Beth Goodpaster); and
12. River Communities United for Responsible Energy, or R-CURE; (Kristen Eide-Tollefson).

The comments are provided in the Board packet. Most comments addressed the following four major issues: (1) whether the state EIS would address the impacts of the continued operation of the plant as well as the proposed ISFSI, (2) the implications of federal preemption of radioactive health and safety standards, (3) the term of storage to be assumed for the nuclear spent fuel, and (4) what types of alternatives to continued operation of the plant would be studied.

Changes to Draft Scope

In response to extensive comments, the EQB staff revised the proposed EIS scope to include (1) an analysis of the impacts of on-site storage at Monticello for up to 200 years--in parallel to the time frame that the PUC required Xcel Energy to analyze for economics, (2) a clarification that despite federal preemption, the EIS will address radiological health and safety issues in order to inform the public, inform the NRC, and compare generation alternatives, but will not include detailed independent studies of radiological health and safety issues, and (3) a process for defining one or more renewable "distributed energy" alternatives to the Monticello Generating Plant. Although some requested it, the revised scope of the EIS does not include an analysis of impacts of permanent storage of the spent nuclear fuel on-site at Monticello.

The scoping decision also describes how information in the Xcel Energy CON Application, supplements, and other sources will be verified and incorporated by reference to the maximum extent possible. In addition, the NRC will be completing a separate EIS as part of its decision whether to re-license the reactor. Regarding the federal EIS, different timelines for the state and

federal EIS processes make a joint EIS impractical. However, duplication between the state and federal EIS will be nevertheless be minimized to the maximum extent possible.

Comparison to Prairie Island EIS

The EIS that the EQB did for the Prairie Island ISFSI in 1991 focused on the type of storage containers and the appropriate radiation exposure limit. The proposed scope for the Monticello EIS instead includes a summary of radiation health and safety issues, but focuses on an analysis of the feasibility of generation alternatives to continued operation of the plant. There are several reasons for this. First, since 1991 there have been several federal court decisions that make it more clear that federal regulations preempt state authority over radiation health and safety of nuclear reactors and the storage of spent nuclear fuel. Second, in 1991 the ISFSI at Prairie Island was one of the early dry storage proposals in the country. There are now 28 ISFSI's in operation. Third, the NRC now has pre-approved storage systems. The NRC, through rulemaking, has issued a general license for the spent-fuel storage technology Xcel Energy proposes to use at Monticello (Transnuclear NUHOMS 61 BT). Xcel Energy must demonstrate to the NRC that the ISFSI is designed to meet the specifications incorporated in the system's NRC general license and certificate of compliance. But otherwise, no new permit or approval for the ISFSI is required from the NRC.

One commenter (Carol Overland) recommended that the EIS nevertheless include extensive independent analysis of radiological health and safety issues in order to be able to adequately intervene in the NRC license renewal process. However, Staff believes that assuming the state would intervene in the federal process is premature, that the license renewal process is a different decision than the ISFSI approval, and that a detailed, independent analysis of these radiation safety and health issues would not be a good use of state time and resources.

Staff Recommendation:

Staff recommends that the Board adopt the proposed Findings of Fact, Conclusions and Order approving the proposed Scoping Decision and Scoping Environmental Assessment Worksheet for the Monticello ISFSI EIS.